

STATE OF WISCONSIN, CIRCUIT COURT, _____ COUNTY

For Official Use

IN THE MATTER OF

☐ Amended

**Determination and Order on
Petition for Guardianship
Due to Incompetency**

Date of Birth _____

Case No. _____

This matter is before the court on a Petition for Guardianship Due to Incompetency and a hearing has been held.

Based upon consideration of the following:

1. the report of the guardian ad litem.
2. the medical or psychological reports, provided, ordered or offered to the court.
3. whether other reliable resources are available to provide for the individual's personal needs or property management, and whether appointment of a guardian is the least restrictive means to provide for the individual's need for a substitute decision maker.
4. the preferences, desires, and values of the individual with regard to personal needs or property management.
5. the nature and extent of the individual's care and treatment needs and property and financial affairs.
6. whether the individual's situation places him or her at risk of abuse, exploitation, neglect, or violation of rights.
7. whether the individual can adequately understand and appreciate the nature and consequences of his or her impairment.
8. the individual's management of the activities of daily living.
9. the individual's understanding and appreciation of the nature and consequences of any inability he or she may have with regard to personal needs or property management.
10. the extent of the demands placed on the individual by his or her personal needs and by the nature and extent of his or her property and financial affairs.
11. any physical illness of the individual and the prognosis of the individual.
12. any mental disability, alcoholism, or other drug dependence of the individual and the prognosis of the mental disability, alcoholism, or other drug dependence.
13. any medication with which the individual is being treated and the medication's effect on the individual's behavior, cognition, and judgment.
14. whether the effect on the individual's evaluative capacity is likely to be temporary or long term, and whether the effect may be ameliorated by appropriate treatment.
15. other relevant evidence.

THE COURT FINDS:

1. JURISDICTION, VENUE, NOTICE AND EVALUATIONS TO COURT

- A. This court ☐ does ☐ does not have jurisdiction of the subject matter and of the person of the individual.
- B. This court ☐ is ☐ is not a proper venue.
- C. Notice ☐ was ☐ was not properly served.
- D. The individual is:
- ☐ present.
- ☐ not present because the guardian ad litem waived the individual's attendance.
- ☐ Other: _____
- E. The proposed guardian and any proposed stand-by guardian are:
- ☐ present as follows: _____
- ☐ not present and the court permits attendance by telephone for good cause shown as follows: _____
- ☐ not present and the court excuses the attendance as follows: _____
- F. Additional evaluations are not necessary.

2. CAPACITY AND NEED FOR GUARDIANSHIP

Upon presentation of clear and convincing evidence:

- ☐ the individual is not incompetent.
- ☐ advanced planning by the individual renders guardianship unnecessary.
- ☐ the elements of the petition are unproven.
- ☐ the application for appointment of a conservator by the proposed ward under §54.76 is appropriate.
- ☐ the individual has been adjudicated incompetent in another jurisdiction and a petition for receipt and acceptance of a foreign guardianship has been granted.
- ☐ the individual is a minor who has attained age 14 and is developmentally disabled.
- ☐ the individual is found to be incompetent as a result of:
 - ☐ a developmental disability
 - ☐ degenerative brain disorder
 - ☐ serious and persistent mental illness
 - ☐ other like incapacities

based upon the following standards:

- A. The individual is at least 17 years and 9 months of age.
- B. The individual's need for assistance in decision making or communication is unable to be met effectively and less restrictively through appropriate and reasonably available training, education, support services, health care, assistive devices, or other means that the individual will accept.
- ☐ C. For purposes of appointment of **guardian of the person**, because of impairment, the individual is unable effectively to receive and evaluate information or to make or communicate decisions to such extent that the individual is unable to meet the essential requirements for the individual's physical health and safety.
- ☐ D. For purposes of appointment of **guardian of the estate**, because of an impairment, the individual is unable effectively to receive and evaluate information or to make or communicate decisions related to management of the individual's property or financial affairs, to the extent that at least one of the following applies:
 - 1. The individual has property that will be dissipated in whole or in part; or
 - 2. The individual is unable to provide for the individual's support; or
 - 3. The individual is unable to prevent financial exploitation.

☐ **3. GUARDIAN OF THE PERSON**

The individual has incapacity in part or in full to exercise rights that are believed to be relevant to the individual's present or future decision making.

A. Rights to be removed in full. If removed, these rights may not be exercised by any person.

The individual has incapacity to exercise one or more of the following rights and such right should be removed:

- ☐ 1. Right to execute a will.
- ☐ 2. Right to serve on a jury.
- ☐ 3. Right to register to vote or to vote in an election.

B. Rights to be removed or exercised by individual with consent of Guardian of Person.

If removed, these rights may not be exercised by any person. If a right is to be affected, the box to the far left must be marked. Marking only box (1) or (2) has no effect and the individual retains the right.

The individual has incapacity to exercise one or more of the following rights and such right should be removed or the individual retains the right to exercise the right only with consent of the guardian of the person.

- ☐ a. Right to consent to marriage:

Choose (1) or (2):

- ☐ (1) the individual has incapacity to exercise this right.
- ☐ (2) the individual retains the right to exercise this right only with consent of the guardian of the person.
- ☐ b. Right to apply for an operator's license, a hunting, fishing or other license issued under ch. 29, or a credential as defined in §440.01(2), Wisconsin Statutes: _____.

Choose (1) or (2):

- ☐ (1) the individual has incapacity to exercise this right.
- ☐ (2) the individual retain the right to exercise this right only with consent of the guardian of the person.
- ☐ c. Right to consent to sterilization.

Choose (1) or (2):

- ☐ (1) the individual has incapacity to exercise this right.

- ☐ (2) the individual retain the right to exercise this right only with consent of the guardian of the person.
- ☐ d. Right to consent to organ, tissue, or bone marrow donation.

Choose (1) or (2):

- ☐ (1) the individual has incapacity to exercise this right.
- ☐ (2) the individual retain the right to exercise this right only with consent of the guardian of the person.

C. Powers to be transferred to Guardian of the Person in part or in full.

If a power is to be affected, the box to the far left must be marked. Marking only box (1) or (2) has no effect and the individual retains the power.

- 1) It is appropriate to appoint a permanent guardian of the person.
- 2) The individual lacks evaluative capacity in part or in full to exercise specific powers requested to be transferred to the guardian as follows:

- ☐ ab. Except as otherwise limited by Wisconsin Statute 54.25(2)(d)2.ab., the power to give an informed consent to the voluntary receipt by the guardian's ward of a medical examination, medication, including any appropriate psychotropic medication, and medical treatment that is in the ward's best interest, if the guardian has first made a good-faith attempt to discuss with the ward the voluntary receipt of the examination, medication, or treatment and if the ward does not protest.

Choose (1) or (2):

- ☐ (1) Individual retains limited capacity and the power to: _____
Guardian of the person to exercise power not retained by individual.

- ☐ (2) Individual lacks evaluative capacity in full. Guardian of the person to exercise full power.

- ☐ ac. Except as otherwise limited by Wisconsin Statute 54.25(2)(d)2.ac., the power to give informed consent, if in the ward's best interests, to the involuntary administration of a medical examination, medication other than psychotropic medication, and medical treatment that is in the ward's best interest.

Choose (1) or (2):

- ☐ (1) Individual retains limited capacity and the power to: _____
Guardian of the person to exercise power not retained by individual.

- ☐ (2) Individual lacks evaluative capacity in full. Guardian of the person to exercise full power.

- ☐ b. The power to authorize individual's participation in an accredited or certified research project if the research project might help the individual, or others if minimal risk of harm.

Choose (1) or (2):

- ☐ (1) Individual retains limited capacity and the power to: _____
Guardian of the person to exercise power not retained by individual.

- ☐ (2) Individual lacks evaluative capacity in full. Guardian of the person to exercise full power.

- ☐ c. The power to authorize individual's participation in research that might not help the individual but might help others if greater than minimal risk of harm to the individual but evidence indicates individual would have elected to participate.

Choose (1) or (2):

- ☐ (1) Individual retains limited capacity and the power to: _____
Guardian of the person to exercise power not retained by individual.

- ☐ (2) Individual lacks evaluative capacity in full. Guardian of the person to exercise full power.

- ☐ d. The power to consent to experimental treatment in the individual's best interests.

Choose (1) or (2):

- ☐ (1) Individual retains limited capacity and the power to: _____
Guardian of the person to exercise power not retained by individual.

- ☐ (2) Individual lacks evaluative capacity in full. Guardian of the person to exercise full power.

- ☐ e. The power to give informed consent to receipt by individual of social and supported living services.

Choose (1) or (2):

- ☐ (1) Individual retains limited capacity and the power to: _____
Guardian of the person to exercise power not retained by individual.

- ☐ (2) Individual lacks evaluative capacity in full. Guardian of the person to exercise full power.

- ☐ f. The power to give informed consent to release of confidential records other than court, treatment, and patient health care records and redisclosure as appropriate.

Choose (1) or (2):

- ☐ (1) Individual retains limited capacity and the power to: _____
Guardian of the person to exercise power not retained by individual.

- ☐ (2) Individual lacks evaluative capacity in full. Guardian of the person to exercise full power.

- ☐ g. The power to make decisions related to mobility and travel.
Choose (1) or (2):
☐ (1) Individual retains limited capacity and the power to: _____.
Guardian of the person to exercise power not retained by individual.
☐ (2) Individual lacks evaluative capacity in full. Guardian of the person to exercise full power.
- h. [Intentionally omitted to correspond with statute.]
- ☐ i. The power to choose providers of medical, social, and supported living services.
Choose (1) or (2):
☐ (1) Individual retains limited capacity and the power to: _____.
Guardian of the person to exercise power not retained by individual.
☐ (2) Individual lacks evaluative capacity in full. Guardian of the person to exercise full power.
- ☐ j. The power to make decisions regarding educational and vocational placement and support services or employment.
Choose (1) or (2):
☐ (1) Individual retains limited capacity and the power to: _____.
Guardian of the person to exercise power not retained by individual.
☐ (2) Individual lacks evaluative capacity in full. Guardian of the person to exercise full power.
- ☐ k. The power to make decisions regarding initiating a petition for termination of marriage.
Choose (1) or (2):
☐ (1) Individual retains limited capacity and the power to: _____.
Guardian of the person to exercise power not retained by individual.
☐ (2) Individual lacks evaluative capacity in full. Guardian of the person to exercise full power.
- ☐ l. The power to receive all notices on behalf of individual.
Choose (1) or (2):
☐ (1) Individual retains limited capacity and the power to: _____.
Guardian of the person to exercise power not retained by individual.
☐ (2) Individual lacks evaluative capacity in full. Guardian of the person to exercise full power.
- ☐ m. The power to act in all proceedings as an advocate of the individual, except the power to enter into a contract that binds the individual or the individual's property or to represent the individual in any legal proceedings pertaining to the property, unless the guardian of the person is also the guardian of the estate.
Choose (1) or (2):
☐ (1) Individual retains limited capacity and the power to: _____.
Guardian of the person to exercise power not retained by individual.
☐ (2) Individual lacks evaluative capacity in full. Guardian of the person to exercise full power.
- ☐ n. The power to apply for protective placement or for commitment.
Choose (1) or (2):
☐ (1) Individual retains limited capacity and the power to: _____.
Guardian of the person to exercise power not retained by individual.
☐ (2) Individual lacks evaluative capacity in full. Guardian of the person to exercise full power.
- ☐ o. The power to have custody of the individual, if an adult, and the power to have care, custody, and control of the individual, if a minor.
Choose (1) or (2):
☐ (1) Individual retains limited capacity and the power to: _____.
Guardian of the person to exercise power not retained by individual.
☐ (2) Individual lacks evaluative capacity in full. Guardian of the person to exercise full power.
- ☐ p. other specific powers: _____

☐ See attached☐ **4. GUARDIAN OF THE ESTATE**

It is appropriate to:

- ☐
- A. Appoint and authorize a permanent guardian of the estate to perform duties and exercise powers as follows:

Choose one:

- ☐ (1) **Most authority retained by ward, limited authority transferred to guardian:**
Individual retains evaluative capacity except for the ability to perform a duty or exercise a power which is to be transferred to the guardian of the estate as follows: _____.
- ☐ (2) **Limited authority retained by ward, most authority transferred to guardian:**

Individual retains limited evaluative capacity and should retain the ability to perform a duty or exercise a power as follows: _____.

Guardian of the estate is to perform the duties of a guardian of the estate under §54.19, and exercise the powers that do not require court approval under §54.20(3), except as retained by individual.

☐ (3) **Full authority transferred to guardian:**

Individual lacks evaluative capacity in full. Guardian of the estate is requested to perform the duties of a guardian of the estate under §54.19, and exercise the powers that do not require court approval under §54.20(3).

- ☐ B. Authorize the guardian of the estate to perform the following **additional powers** (other than to make gifts) that require court approval under §54.20(2): _____

☐ **See attached**

- ☐ C. Direct that the guardian of the estate deposit the individual's funds of \$100,000 or less in an insured account of a bank, credit union, savings bank or savings and loan association in the name of the guardian and the ward, payable only upon further order of the court, and waive bond for the guardian of the estate.

☐ **5. ALTERNATIVE TO GUARDIANSHIP OF ESTATE FOR SMALL ESTATES.**

Dispense with the appointment of a guardian of the estate and require transfer the individual's funds of \$50,000 or less under one of the alternatives for small estates under §54.12(1), because the individual lacks evaluative capacity in full or in part: _____

☐ **See attached**

☐ **6. POWERS OF ATTORNEY**

Even though the ward has executed a financial durable power of attorney, has a current, valid power of attorney for health care, or other advanced planning, guardianship is still necessary, for the following reasons: _____

- ☐ Good cause exists to revoke or limit the power of attorney for health care because: _____

☐ **See attached**

- ☐ Good cause exists to revoke or limit the durable financial power of attorney because: _____

☐ **See attached**

- ☐ The appointment of the agent under the individual's power of attorney for health care as guardian of the person is not in the best interest of the individual because: _____

☐ **See attached**

- ☐ The appointment of the agent under the individual's durable financial power of attorney as guardian of the estate is not in the best interest of the individual because: _____

☐ **See attached**

☐ **See attached**

7. SUITABILITY OF GUARDIAN

Based upon the Statement of Acts by Proposed Guardian and Consent to Serve, the recommendation of guardian ad litem, and the court having considered all nominations and applicable preferences and criteria, including the opinions of the proposed ward and of the members of his or her family, and any potential conflicts of interest resulting from the proposed guardian's employment or other potential conflicts of interest, the following person or organization is competent and suitable to be appointed:

Type of Guardian		Name & Address	Phone
Guardian of the	Person		
Guardian of the	Estate		
Standby Guardian of the	Person		
Standby Guardian of the	Estate		

8. PETITIONER'S ATTORNEY FEES AND COSTS

It is ☐ equitable ☐ inequitable to award payment of petitioner's reasonable attorney fees and costs from the individual's income and assets.

THE COURT ORDERS:

The petition is:

- ☐ dismissed.
- ☐ granted as follows:

1. POWERS OF ATTORNEY

- ☐ The power of attorney for health care:
- ☐ remains in effect.
- ☐ is revoked.
- ☐ is limited as follows: _____ ☐ See attached
- ☐ The durable financial power of attorney:
- ☐ remains in effect.
- ☐ is revoked.
- ☐ is limited as follows: _____ ☐ See attached

2. APPOINTMENT OF GUARDIAN

The court appoints the following:

Type of Guardian		Name & Address	Phone
Guardian of the	Person		
Guardian of the	Estate		
Standby Guardian of the	Person		
Standby Guardian of the	Estate		

3. LIMITATIONS AND POWERS

- A. The guardian is authorized to exercise powers in part or in full consistent with the above findings in a manner that is appropriate to the individual and that constitutes the least restrictive form of intervention.
- ☐ B. Co-Guardians must concur with each other when making decisions on behalf of the ward unless otherwise ordered by the court ☐ as follows: _____ ☐ See attached

4. BONDThe **guardian of the estate**:

- ☐ shall be issued letters of guardianship upon filing ☐ surety bond ☐ signature bond in the amount of \$ _____.
- ☐ is not required to file a bond provided that the guardian shall deposit the individual's funds of \$100,000 or less in an insured account in the name of the guardian and the individual, and payable only upon further order of the court. Proof of deposit shall be filed with the court within _____ days.
- ☐ is not required to file a bond and bond is waived.
- ☐ Other: _____ ☐ See attached

5. INVENTORY, ANNUAL ACCOUNT, ANNUAL REPORT☐ **Inventory and Annual Account**The guardian of the estate shall file an inventory of the individual's assets **within 60 days** ☐ and provide a copy of the inventory to the following persons: _____

- ☐ The guardian of the estate shall file an account **by April 15 of each year** or as otherwise required by the court as follows: _____
- ☐ The guardian of the estate is authorized to file a Modified Annual Account of Married Ward which shall be filed by **April 15 of each year** or as otherwise required by the court as follows: _____.

☐ **Annual Report.**

The guardian of person shall file Annual Report on the Condition of the Ward.

6. CHANGE OF ADDRESS

The guardian shall immediately notify the court in writing of any change in the address of the individual or of the guardian.

☐ **7. ALTERNATIVE TO GUARDIANSHIP OF ESTATE**

As an alternative to appointing a guardian of the estate, the individual's funds of \$50,000 or less shall be transferred under one of the alternatives for small estates under §54.12(1), as follows: _____

8. FEES AND COSTS OF PROCEEDING

☐ A. Guardian is not appointed: The petitioner shall pay the compensation of the guardian ad litem and the individual's legal counsel.

☐ B. Guardian is appointed:

1. Reasonable compensation of the guardian ad litem and individual's counsel shall be paid from the individual's income or assets, if sufficient. If the individual's income or assets are insufficient, the guardian ad litem shall be paid by the county of venue and the individual's counsel shall be paid at public expense or by the county of venue.

2. Petitioner's reasonable attorney fees and costs shall be paid:

☐ by the petitioner.

☐ from the individual's income or assets.

☐ C. Other: _____

9. GUARDIAN'S COMPENSATION AND REIMBURSEMENT

The guardian's compensation and reimbursement of expenses, if any, must be approved by the court before payment is made.

THIS IS A FINAL JUDGMENT/ORDER FOR PURPOSES OF APPEAL.

Name of Attorney	
Address	
Telephone Number	Bar Number

BY THE COURT:

Circuit Court Judge/Court Commissioner

Name Printed or Typed

Date